

# FEDERAL COMMUNICATIONS COMMISSION

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**MEDIA BUREAU**

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Tower Investment Trust, Inc.  
1305 South Glen Burnie Road  
New Bern, North Carolina 28562

In re: Tower Investment Trust, Inc.  
WBNK(FM), Pine Knoll Shores, NC  
Facility I.D. No.: 170178  
BPH-20090626ACC

Dear Applicant:

This refers to the above-captioned minor change application filed by Tower Investment Trust, Inc. ("Tower"). Tower proposes to modify the broadcast facilities of WBNK(FM), Pine Knoll Shores, NC, (the "Tower Station") by increasing authorized effective radiated power ("ERP") from 11.5 kilowatts to 21.9 kilowatts.

Tower requests processing under Section 73.215 of the Commission's Rules (the "Rules"). However, the proposed power increase would result in a small amount of prohibited overlap to third-adjacent channel station WERO(FM), Washington, NC. As required by Section 73.215, this overlap is calculated on the basis of WERO(FM)'s maximum class facilities rather than licensed facilities. Accordingly, Tower requests a waiver of Section 73.215(a) and grant of the referenced application. For the reasons set forth below, we deny the waiver and dismiss the application.

Tower argues that a waiver is principally warranted to remedy "seasonal" ducting interference from several first-adjacent channel stations. It claims that this interference results in deficient service to Pine Knoll Shores, the station's community of license, and to many communities within the station's service contour. Tower does not provide signal strength measurements of the interfering stations or data on the seasonal periods during which ducting occurs. It notes, however, that these are "coverage anomalies typical of a coastal facility."

In addition, Tower contends that a waiver is warranted because there is no population in the overlap area which consists of water and wetlands. It submits documentation in support of its claim that there is no likelihood of future construction or public use of land in the overlap area. This land is currently used for farming. Finally, it notes that no actual overlap would result from the power increase and that tower limitations likely preclude WERO(FM) from obtaining the maximum class facilities on which the contour overlap is predicted to occur.

On reconsideration of the Report and Order adopting Section 73.215,<sup>1</sup> the Commission concluded that waiver of the subsection (a) contour protection requirements may be appropriate in “a very small number of cases...to permit greater power in a short-spaced station’s direction where it is demonstrated that such a facility is necessary to allow use of a multiplexed transmitter antenna and that its authorization would otherwise serve the public interest...” The Station does not use a multiplexed antenna and the area of overlap lies along a different radial than the radial which intersects the community of license. Crucially, Tower fails to demonstrate that a directional antenna could not be used to eliminate the prohibited overlap. To the contrary, a staff analysis has found that Tower would be required to effect a mere 2.8 dB maximum power reduction between the Station’s 280 to 330 degree radials and, thus, Tower could implement the requested power increase to Pine Knoll Shores - which lies on the Station’s 235 degree radial-consistent with Section 73.316(a) of the Commission’s Rules. The Commission has long and repeatedly held that it favors lesser but adequate coverage to greater coverage from facilities that do not comply with core interference rules.<sup>2</sup> In similar circumstances, the Commission concluded that it “*need not consider* the alleged public interest benefits” advanced by an applicant seeking a Section 73.215(a) waiver.<sup>3</sup> Accordingly, we conclude that a waiver of Section 73.215(a) is not warranted.

Although resolution of this issue is not necessary for us to dispose of the Application,<sup>4</sup> we wish to make clear that we will not entertain Section 73.215(a) waiver requests based on the theory that the short-spaced station cannot construct, or is highly unlikely to construct, maximum class facilities. FM non-reserved band stations which are fully spaced to co- and adjacent channel stations enjoy protection as if they operated at maximum class facilities. This FM core technical licensing principle provides both protection for these stations and flexibility for site relocations and service improvements. It has been an extremely useful tool for preserving interference-free service in a highly contested spectrum environment. It would be perverse to give lesser rights to a fully-spaced station based on the unilateral decision of a second station to operate on a short-spaced basis to the first pursuant to Section 73.215 of the Rules. To be sure, in this case WERO(FM) could voluntarily elect to forgo such protections by filing an application to “request” Section 73.215 processing towards the Station. However, absent grant of such an application, we will not entertain a request for diminished protection rights in this context.

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<sup>1</sup> Amendment of Part 73 of the Commission’s Rules to Permit Short-Spaced FM Station Assignments by Using Directional Antennas, 6 FCC Rcd 5356, 5360 n.27 (1991).

<sup>2</sup> See Board of Education of the City of Atlanta (WABE-FM), 82 FCC 2d 125, 127 (1980); Open Media Corp, 8 FCC Rcd 4070, 4071 (1993); Educational Information Corporation, 6 FCC Rcd 2207, 2208 (1991)

<sup>3</sup> Greater Media Radio Company, Inc. Memorandum Opinion and Order, 15 FCC Rcd 7090, 7099 (1991).

<sup>4</sup> See Colonial Communications, Inc., 10 FCC Rcd 2296, 2296 (1991) (an agency need not decide questions which are not relevant to its decision) (emphasis added).

In light of the above, Tower's request for waiver IS DENIED. In addition, since the proposal requested waiver of the Commission's rules and the waiver was denied, the applicant is not afforded its one opportunity to file a curative amendment. *See Report and Order*, 7 FCC Rcd 5074 (1992) (paragraph 22). Accordingly, the application, File No. BPH-20090626ACC, being unacceptable for filing, IS HEREBY DISMISSED. This action is taken pursuant to Section 0.283 of the Rules.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter H. Doyle", written over the word "Sincerely,".

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

cc: Mark N. Lipp, Esq.